

Notice of Allowability

Application No.

10/082,618

Applicant(s)

OLSTEIN ET AL

Examiner

Zachariah Lucas

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of July 8, 2005 and the interview of August 5, 2005.
2. ☒ The allowed claim(s) is/are 1-3 and 73-83.
3. ☒ The drawings filed on 22 February 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>8-5-05</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

1. Currently claims 1-3, and claims 73-83 are pending in the application and allowed.
2. Claims 1-3 were under consideration and rejected in the prior action, mailed on March 8, 2005. Claims 73-83 were withdrawn as to non-elected inventions. The Applicant submitted arguments in traversal of the rejections in the Response of July 8, 2005.
3. Claims 1-3 were found allowable upon the making of the amendments to the claims as described below.
4. Claims 1-3 directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 73-83, directed to the process of using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Claims 73-83 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

EXAMINER'S AMENDMENT

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joseph T. Leone on August 5, 2005.

The application has been amended as follows:

Claim 1 is amended to read as follows:

1. An isolated chelated complex comprising:

nisin, fusion proteins thereof, and mixtures thereof; and

a detectable label comprising cobalt chelated with the nisin.

The amendments were made to this claim to avoid reading on a product of nature, and to clarify that the cobalt is chelated with the nisin in the complex of the two compounds.

Claim Rejections - 35 USC § 103

6. **(Prior Rejection- Withdrawn)** Claims 1-3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Siddigi et al. (U.S. Patent 5,541,113), in view of Olstein et al., (U.S. Patent 5,750,357), Meyer et al. (Arch Microbiol 167:67-77), and Friedman (J Agricult Food Chem 47(4): 1295-319), and of Pearce et al. (J Agric Food Chem 36: 7070-17). Applicant's arguments in traversal are found persuasive. The rejection is therefore withdrawn.

7. **(Prior Rejection- Withdrawn)** In the prior action, claims 1-3 were rejected as obvious over the teachings of Siddigi in view of Olstein, Meyer, Friedman, and of Pearce as described above, further in view of Buchman et al. (J Biol Chem 263(31): 16260-66). Applicant's arguments in traversal are found persuasive. The rejection is therefore withdrawn.

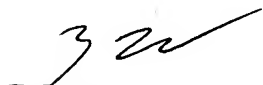
Art Unit: 1648


Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Z. Lucas
Patent Examiner


JAMES HOUSEL 8/8/05
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600